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APPLICATION NO. 015	FILING DATE 12/19/00	FIRST NAMED INVENTOR SHELDON	ATTORNEY DOCKET NO. A-97.72.0
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EXAMINER STEWART, A

ART UNIT 3738	PAPER NUMBER 6
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DATE MAILED: 10/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/665,025

Applicant(s)
Sheldon et al

Examiner
Alvin Stewart

Art Unit
3738



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 19, 2000
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 & 5
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 18-25 of claim 1 are not well understood. It is not clear the relationship between the external receptor element, the internal receptor element and the internal bearing member, specially line 22 between the internal receptor element and the internal bearing element.

Lines 32-36 are rejected because it said that the securing member precludes impingement of the femoral component upon the bearing member but Figs. 25 and 26 clearly show that the femoral component (the head) is touching the bearing. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 20-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Lopez et al US Patent 5,938,702.

Lopez et al discloses an acetabular cup comprising: a shell member (10) and a bearing member (60). The shell member (10) comprises an internal cavity (22), a first securing element (46) and a second securing element (44)(see col. 4, lines 45-54). Additionally, the shell member (10) includes a lower end (24) and an upper end (40) and the first and second elements are located adjacent the lower end of the shell member (see Fig. 1). The shell member comprises a first (46) and second (44 & 42) securing elements for complementary attachment with the bearing element (see Fig. 1). The second (44) securing element has a tapered configuration that attach a complementary surface on the bearing. The bearing member includes a rib projecting out of the surface and the shell member includes a recess in the shell member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-6, 9-12, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0773007A1.

EP 773007A1 discloses an acetabular cup comprising: a shell member (1), a securing member (3) and a bearing member (4). The shell member includes a lower end and an upper end, a cavity extends from the lower end toward the upper end and a tapered internal securing surface that is located adjacent the lower end of the shell (see Fig. 1, element 5). The bearing has an external tapered surface, and the securing member has a tapered external (located adjacent to the lower end) and internal securing surfaces. The shell member is attached to the securing member and the securing member is attached to the bearing member.

Regarding claims 9-12 and 14-17, see Fig. 7 disclosing two offset central axis and Fig. 6 disclosing an acute angle. Finally, acetabular cups are used with femoral components that have a head and a neck. However, EP 773007A1 does not disclose a securing member made of metal.

Regarding the metallic securing member, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a securing member made of metal because of their biological compatibility and the strenght that they have during high load stresses. For that reason, it would have been obvious to use a metal in the securing member.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 773007A1 in view of EP 554214A1.

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EP 773007A1 discloses the invention substantially as claimed. However, EP 773007A1 does not disclose a domed portion between a ring portion adjacent the lower end and an upper end of the securing member.

EP 554214A1 teaches a complete ring creating a dome portion for the purpose of attaching the bearing with the shell.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ring of the EP 773007A1 and close it (as shown by the EP 554214A1 reference) in order to create a better attachment connection.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over over EP 773007A1 in view of EP 554214A1 as applied to claim 7 above, and further in view of Lopez et al US Patent 6,129,765.

EP 773007A1 as modified by EP 554214A1 discloses the invention substantially as claimed. However, the references do not disclose a finger, a flange and a notch.

Lopez et al teaches a finger, a flange and a notch for the purpose of attaching the shell to the bearing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the attachment means of the EP 773007A1 reference and use the Lopez et al arrangement in order to perform a better attachment. It is well known in the art the use of this type of attachment in order to create a strong connection.

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Claims 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0773007A1 in view of Lopez et al US Patent 6,129,765.

EP 0773007A1 discloses the invention substantially as claimed. However, Lopez et al does not disclose all the structural limitations claimed in claim 13 and 18.

Lopez et al teaches all the structural limitations claimed in claims 13 and 18 for the purpose of creating a strong attachment

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the attachment connection of the EP 0773007A1 reference with the finger attachment of the Lopez et al reference in order to create a strong attachment between the shell and the securing member. This type of attachment is well known in the art as shown in Figs. 1-4. The above figures disclose the finger, flange and notch.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0773007A1 in view of Oueveau et al US Patent 4,822,369.

EP 0773007A1 discloses the invention substantially as claimed. However, EP 0773007A1 does not disclose a cushion between the securing member and the femoral component.

Oueveau et al teaches a cushion between a securing element and the femoral component for the purpose of allowing a slight displacement of the femoral component.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a cushion between the securing member and the bearing in order to allow a slight displacement of the femoral component, so a complete dislocation is prevented.

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Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lopez et al US Patent 5,938,702 in view of Pappas et al US Patent 5,376,122.

Lopez et al discloses the invention substantially as claimed. However, Lopez et al does not disclose a rib as claimed in claim 26.

Pappas et al teaches all the structure limitations claimed in claim 26. See Figs. 14-20 for the purpose of creating a strong attachment between the shell and the bearing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Lopez et al reference with the Pappas et al reference in order to create a strong attachment between the shell and the bearing.

Claims 27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lopez et al US Patent 5,938,702.

Lopez et al discloses all the structure limitations as shown above. However, Lopez et al does not disclose a kit comprising of a plurality of bearings having different characteristics and does not disclose the method of inserting the implant.

It is well known in the art the use of different inner parts (bearings) attached to a shell for the purpose of satisfying different articulation requirements for a given outer part location in an individual pelvis.

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Conclusion

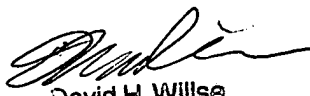
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. Alvin Stewart whose telephone number is (703) 305-0277. The examiner can normally be reached on Monday-Friday from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary examiner, Dave Willse, can be reached on (703)308-2903 or the examiner's supervisor, Corrine McDermott, can be reached on (703)308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Alvin Stewart

October 25, 2001.


David H. Willse
Primary Examiner